

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Use of Spectrum Bands Above 24 GHz For	)	GN Docket No. 14-177
Mobile Radio Services	)	
	)	

**REPLY COMMENTS OF AT&T SERVICES, INC.**

AT&T Services, Inc., on behalf of the subsidiaries and affiliates of AT&T Inc. (collectively, “AT&T”), hereby submits the following reply to the comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Fourth Further Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1</sup> AT&T’s original comments, like those of majority of commenters, strongly supported the Commission’s proposal to use an incentive auction to limit the impact of 39 GHz encumbrances and maximize the potential public benefits of the band.<sup>2</sup> AT&T’s comments, like others, suggested some minor modifications to

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<sup>1</sup> *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, GN Docket No. 14-177, Fourth Further Notice of Proposed Rulemaking, FCC 18-73 (August 3, 2018) (“*Fourth FNPRM*”).

<sup>2</sup> Comments of Competitive Carriers Association, GN Docket No. 14-177 at 1-2 (filed Sept. 17, 2018) (“CCA Comments”) (stating “CCA supports the Commission’s plan for an incentive auction to allow access to valuable spectrum resources while properly reassigning incumbent 39 GHz license holders”); Comments of Ericsson, GN Docket No. 14-177 at 4 (filed Sept. 17, 2018) (“Ericsson Comments”) (supporting measures to “better facilitate the repacking of incumbents, which is critical to reducing encumbrances and turning 39 GHz into a 5G band”); Comments of PVT Networks, Inc., GN Docket No 14-177 at 3 (filed Sept. 17, 2018) (“PVT Comments”) (supporting “voluntary license swap and license modification procedures that allow PEA licensees to assemble contiguous spectrum holdings”); Comments of T-Mobile USA, Inc., GN Docket No. 14-177 at 5 (filed Sept. 17, 2018) (“T-Mobile Comments”) (noting the Commission “has correctly recognized that in order for the 39 GHz band to be licensed and used most efficiently, it should create opportunities for the auction of unencumbered spectrum blocks to the greatest extent possible”); Comments of the Telecommunications Industry Association, GN Docket No. 14-177 at 9-10 (filed Sept. 17, 2018) (“TIA Comments”) (applauding “the

the process and regulations, but fundamentally there is strong accord on the basic foundation proposed in the *Fourth FNPRM*.<sup>3</sup> With the added suggestions below, AT&T urges the Commission to rapidly schedule and move forward with the proposed auction.

As an initial matter, the record reflected near unanimity among those commenting on the issue that the Commission should develop uniform block sizes for millimeter wave spectrum and auction as much substitutable spectrum as possible.<sup>4</sup> While TIA's comments argued for larger bandwidths,<sup>5</sup> most parties recognized that altering the band plan to create 100 MHz channels could limit the number of fractional license interests encumbering the spectrum, leading to a more robust and efficient auction.<sup>6</sup> And, while AT&T fully agrees with TIA that 5G services will be optimized for large bandwidths, AT&T believes the auction process, including an assignment round that guarantees license contiguity, will provide bidders with the opportunity to acquire the wide bandwidth channels they desire. AT&T additionally has supported, and continues to support, an auction that includes both the 37.6-40.0 GHz and 47.2-48.2 GHz bands, as long as adding the 47 GHz band would not delay the auction of the 37.6-40.0 GHz band.<sup>7</sup> The Commission's efforts to bring spectrum resources to market to ensure U.S. leadership in 5G

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Commission's creativity in considering ideas such as an incentive auction to clear or repack incumbents, building on the Commission's demonstrated success with the voluntary incentive auction of television broadcast spectrum"); Comments of Verizon, GN Docket No. 14-177 at 3-4 (filed Sept. 17, 2018) ("Verizon Comments") (noting the Commission's proposal overall "provides a fair and reasonable means to reduce encumbrances and reconfigure existing holdings into contiguous spectrum blocks").

<sup>3</sup> *Id.*

<sup>4</sup> CCA Comments at 2-3; Ericsson Comments at 4-5; T-Mobile Comments at 2-4; Verizon Comments at 4-5.

<sup>5</sup> TIA Comments at 2-3.

<sup>6</sup> CCA Comments at 3-4; T-Mobile Comments at 2-4; Verizon Comments at 4-5.

<sup>7</sup> Comments of AT&T Services, Inc., GN Docket No. 14-177 at 4 (filed Jan. 23, 2018).

should not be allowed to fall short at the eleventh hour after the majority of the work has been accomplished.

As both AT&T and Verizon have discussed in their comments, the Commission should consider the tax ramifications of the reorganization of the 39 GHz incumbent licenses and how those create incentives or disincentives to engage in processes to rationalize the band.<sup>8</sup> While it seems appropriate that an incumbent selling a license for cash should realize and recognize the taxable gain on that authorization, incumbent licensees that swap or use vouchers or otherwise participate in the pre-auction reconfiguration process, or those that are involuntarily relocated post-auction, are engaged in like-kind exchanges that benefit the public interest broadly, and should not trigger taxable events. As Verizon has suggested, “[t]o establish that they can participate in the auction and also qualify for gain nonrecognition, incumbents can show that failure to participate would have resulted in the involuntary conversion of their licenses into new licenses through the repacking process.”<sup>9</sup> To assist incumbents with that showing, the Commission should confirm in its eventual Order that, with the exception of those licenses relinquished in the incentive auction, all incumbent licenses will be “repacked” to conform to the reconfigured 39 GHz band plan.

Most importantly, however, the record supports the Commission’s core auction proposal for the 37.6-40.0 GHz band. While parties have suggested various enhancements to the process or procedures, some of which appear meritorious, the comments all are consistent with developing an auction that is open, equitable, transparent, and efficient, and an overall process that provides for rationalization of the incumbent Rectangular Service Area (“RSA”)

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<sup>8</sup> AT&T Comments at 10; Verizon Comments at 13-14.

<sup>9</sup> Verizon Comments at 13-14.

encumbrances on the spectrum. The incentive auction process is well designed to deal with rationalization of the 39 GHz band and has broad support in the comments.<sup>10</sup> The FCC should, therefore, adopt the proposed clock auction structure with a subsequent assignment round to determine license positioning.

Should the FCC adopt a pre-auction voucher exchange to assist with the reduction of incumbent encumbrances on licenses, AT&T's comments suggested:

- Refinements to a voucher exchange system, if used, including a requirement that it be one-time, confidential, revenue-neutral, rely only on published exchange rates, and only permit exchanging up or down to the nearest whole license interest; and,
- Recognition that participants in a voucher exchange may have different motivations depending on whether they are also participants in the auction.<sup>11</sup>

Verizon, for its part, largely supported the pre-auction voucher exchange, but advocated for elimination of the proposed “one block up or one block down” limitation on incumbent exchanges.<sup>12</sup> T-Mobile was more cautious, arguing that a voucher exchange should be all-or-nothing or, alternatively, that incumbents should be supplied with fractional vouchers, but that there should be no pre-auction, cross-market exchanges.<sup>13</sup> In AT&T's view, there are trade-offs between measures to encourage incumbents to relinquish encumbrances, thus freeing up spectrum for the auction, and ensuring that such measures do not offer flexibility that can be employed to game the auction outcome. Similarly, while incumbents should have the ability to

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<sup>10</sup> T-Mobile Comments at 5 (recognizing Commission's proposal “generally accomplishes” the twin goals of reducing “encumbered and misaligned license area boundaries,” while allowing “incumbent licensees . . . to emerge from any auction with approximately the same spectrum value they held pre-auction”); Verizon Comments at 3.

<sup>11</sup> AT&T Comments at 3-11.

<sup>12</sup> Verizon Comments at 14-15.

<sup>13</sup> T-Mobile Comments at 6-7.

rationalize their holdings, care should be taken to ensure that the process cannot be leveraged to create artificial scarcity in markets in a way that disadvantages new entrants. AT&T believes that, as the Commission evaluates mechanisms to resolve incumbent impairments to licenses, it should principally aim to ensure fair and efficient outcomes. AT&T fully expects, moreover, that refinements may be needed to optimize the auction process.

As a final matter, AT&T objects to the attempt by Diversified Communication, Inc. (“DCI”) to subvert auction resources for its own private gain. DCI, by its own acknowledgement, is a temporary fixed licensee that operates on a secondary basis.<sup>14</sup> Such secondary licensees operate at the sufferance of primary licensees, and consequently have no equitable rights to use the spectrum, much less a right to compensation by primary licensees for being displaced. These licensees knowingly chose to operate in a band where they had no protected right to use the spectrum, and their attempt now to profiteer from the proposed auction should not be tolerated or condoned.

As discussed, AT&T strongly supports the Commission’s overall framework for rationalizing incumbent holdings and distributing licenses for the 37.6-40 GHz band. As recognized by the commenters in this proceeding, the incentive auction process has the potential to allow formation of the large bandwidth licenses that will maximize the benefits of 5G services, while equitably addressing incumbents’ interests and needs. AT&T believes the FCC

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<sup>14</sup> Comments of Diversified Communications, Inc., GN Docket No. 14-177 at 1 (filed Sept. 17, 2018) (noting “[DCI’s] license, WPJC398, is a *temporary-fixed* microwave license that covers multiple LTTS bands, but is *secondary* to the auctioned licenses identified in this FNPRM in the 39 GHz band”) (emphasis added).

should adopt the basic proposal as framed in the *Fourth FNPRM*, including a process for resolving fractional license interests in a way that is both efficient and fair.

Respectfully Submitted,

/s/ Jessica B. Lyons

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